

IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF VIRGINIA
 ROANOKE DIVISION

 BRANDON LESTER,)
)
 Plaintiff)
 -vs-) CIVIL ACTION
) NO. 7:15-cv-00665-GEC
 SMC TRANSPORT, LLC,)
 ISRAEL MARTINEZ, JR.,)
 and)
 SALINAS EXPRESS, LLC,)
)
 Defendants)

DEPOSITION OF MICHAEL T. ATKINS

DATE: April 11, 2016
 TIME: 1:00 p.m.
 LOCATION: Glenn Robinson & Cathey
 Fulton Motor Lofts
 400 Salem Avenue, S.W.
 Suite 100
 Roanoke, Virginia
 REPORTED BY: Mary J. Butenschoen, RPR, #4952
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33

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(Retained by Counsel.)

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1 P R O C E E D I N G S

2 Whereupon at 1:11 p.m.,

3 MICHAEL T. ATKINS

4 after having first been duly sworn to tell the truth, the
5 whole truth, and nothing but the truth, was examined and
6 testified as follows:

7 (Deposition Exhibit Nos. 1 and 2 were
8 marked for identification.)
9 (1:11 p.m.)

10 EXAMINATION

11 BY MR. FRANKL:

12 Q Can you state your full name for the
13 record?

14 A Michael T. Atkins.

15 Q Michael, my name is Dan Frankl and I
16 represent Salinas Express, LLC, and I'm going to ask you
17 about your background and your investigation of the
18 accident that took place on October 26 of 2015 at the rest
19 area at approximately the 158.1 mile marker.

20 If you don't hear a question or
21 understand a question, if you ask me to repeat it or
22 rephrase it, I will be glad to do so. If you answer a
23 question, it will be assumed that you heard it and that
24 you understood it.

1 A Yes, sir.

2 Q Because this is being taken down by a
3 court reporter, if you would answer verbally rather than
4 with a nod of the head and if you could say yes or no as
5 compared to uh-huh and huh-uh, it will make her job a lot
6 easier.

7 A Yes, sir.

8 Q Can you please tell me with whom you are
9 currently employed.

10 A Virginia State Police.

11 Q And how long have you been so employed?

12 A Three years.

13 Q And when did you first start with them as
14 a sworn officer?

15 A April 25, 2013. So when I said three
16 years, it will be three years in 14 days.

17 Q Gotcha.

18 When did you graduate from high school?

19 A June 7, 2009.

20 Q And between 2009 and -- well, once you
21 graduated from high school, were you employed?

22 A I was.

23 Q And what were you employed doing?

24 A I worked at Best Buy for two years.

1 Q All right. And did there -- did you go
2 on and get any additional education?

3 A Yes, sir.

4 Q And where was that?

5 A New River Community College.

6 Q And what was your area of study?

7 A Police science.

8 Q And did you get any type of degree?

9 A I did. I got a associate's degree.

10 Q And when did you get the associate's
11 degree?

12 A In 2011.

13 Q And once you got the associate's degree,
14 what did you do at that point in time?

15 A I attended Cardinal Criminal Justice
16 Academy in Salem, Virginia, for 19 weeks.

17 Q Was that the full program?

18 A It was.

19 Q And when you went into the Cardinal
20 Criminal Justice Academy, did you already have secured a
21 position with the police department?

22 A No, sir.

23 Q So you went on your own?

24 A I did, pre-employment.

1 Q And do you recall, did you have any
2 special training in accident reconstruction in the
3 Cardinal Criminal Justice Academy?

4 A Yes, sir.

5 Q And was it just a basic course?

6 A It was.

7 Q And at some point in time while you were
8 in the academy, did you get an offer to take a position
9 with the Virginia State Police?

10 A Yes, sir.

11 Q And once you graduated, what did you do
12 then from the Cardinal?

13 A Graduated Cardinal and two months later I
14 attended Virginia State Police.

15 Q So what did you do during that two-month
16 period of time?

17 A I worked for my dad.

18 Q And so when you went to the Virginia
19 State Police, did you have to go through another academy?

20 A Yes, sir, 26 weeks.

21 Q And where was that academy?

22 A In Richmond, Virginia.

23 MR. DUNN: How many weeks? I'm sorry.

24 MR. FRANKL: 26.

1 THE WITNESS: 26.

2 BY MR. FRANKL:

3 Q And during the 26 weeks, was --
4 did you go again through a basic accident
5 reconstruction --

6 A Yes, sir.

7 Q -- course?

8 A Yes, sir.

9 Q And when did you graduate from the
10 academy?

11 A Graduated December 20, 2013.

12 Q And were you given a specific designation
13 as to what type of trooper you would be at that time?

14 A When I graduated, I was a Trooper 1.

15 Q Have you had any additional training in
16 accident reconstruction?

17 A Not since graduation.

18 Q And since being designated a Trooper 1,
19 what does that mean? What does a Trooper 1 --

20 A Trooper 1 is just you are on probationary
21 period for one year. After that one year, you become a
22 Trooper 2 and you're off a probationary period.

23 Q So would December of 2014 you would have
24 become a Trooper 2?

1 A I did become a Trooper 2.

2 Q Did you have any specific job assignment
3 as a Trooper 1 or were you just on patrol?

4 A I was just a regular trooper, just put on
5 probationary period in case you do something wrong,
6 something of that sort.

7 Q But as far as when you say you were a
8 regular trooper, is the regular trooper a patrol trooper?

9 A Yes, sir.

10 Q And where were you assigned?

11 A Botetourt County.

12 Q So you have been in Botetourt since you
13 started patrol in December of '13?

14 A Yes, sir. When we graduate from the
15 academy, we go to field training for six weeks, which I
16 did. I went to field training for six weeks riding with
17 another officer learning how to be a trooper. I was, for
18 that six weeks, in Rockbridge County. But once I got off
19 of FTO, I came to Botetourt. So same area, just a
20 different duty post.

21 Q And during the course of either your
22 field training or Trooper 1 and Trooper 2, how many
23 accidents have you investigated, approximately?

24 A Reportable or just complete every kind of

1 crash investigation?

2 Q Just reportable accidents.

3 A 50, approximately.

4 Q And how many I'll say large or serious
5 accidents with injuries like the one we're here for today
6 have you investigated during that same period of time?

7 A Five, approximately.

8 Q And on any of the accidents that you have
9 investigated, have there been any fatalities?

10 A That I investigated, no.

11 Q So have you ever been in charge of an
12 investigation where they have had to call in the state
13 police's accident reconstruction unit?

14 A I have not been involved in any.

15 Q Okay. I have previously marked as
16 Trooper Atkins Exhibit Number 1 a police crash report that
17 is the final one, the one you filled out in the field and
18 the witness statements. Is that a -- Exhibit 1, a
19 complete set of your investigative file and file notes
20 with regard to this accident?

21 A Yes, sir.

22 MS. WHITE: Can I see it?

23 BY MR. FRANKL:

24 Q I've also -- I'm going to show you what's

1 been previously marked as Trooper Atkins Exhibit 2. Is
2 this a overhead view of the rest area that encompasses the
3 accident scene and the place of rest for the vehicles that
4 were involved in this accident?

5 A Yes, sir, it looks to be.

6 Q Okay. Now, we've also got a stack of
7 photographs here. I didn't count them, but I ask you to
8 look through. Do these appear to be the photographs that
9 were taken by the state police associated with this
10 accident?

11 A Based on the first 20 I went through, it
12 looks to be my pictures I took on the side of the --
13 another trooper took with my camera on the side of the
14 road.

15 Q Okay. And it's my understanding there
16 were two other troopers at this scene, Trooper Flowers?

17 A Yes, sir.

18 Q And is he in fact the one that took the
19 majority of the photographs?

20 A Yes, sir, I believe so.

21 Q And the ones at the end taken of the
22 white box truck were -- you took those?

23 A Yes, sir.

24 Q Trooper Flowers had already left by that

1 time?

2 A I believe so.

3 Q And the other trooper was Trooper Taylor?

4 A Yes, sir.

5 Q And what role did Trooper Taylor have at
6 the scene?

7 A I don't recall.

8 Q Okay. Now, it's also my understanding
9 that you met with -- in attached -- strike that.

10 Attached to Exhibit 1, there are four
11 witness statements? The four handwritten witness
12 statements from the four ladies?

13 A Yes. Yes, sir.

14 Q Okay. And it's my understanding that you
15 were involved in obtaining three of those witness
16 statements and that Trooper Flowers was -- handed you the
17 fourth from Ms. Mortensen?

18 A I believe so.

19 Q All right. Prior to today have you ever
20 given a deposition?

21 A No, sir.

22 Q Prior to today have you ever been called
23 in a civil matter to testify in court?

24 A No, sir.

1 Q In looking at -- and anytime you need to
2 refer to Exhibit 1, please feel free to do so.

3 Do you know what time you were first
4 notified of the fact that there was an accident out on 81
5 near the rest area on October 26?

6 A I believe I was notified at 5:40 a.m.

7 Q Notified or arrived at 5:40?

8 A Notified. Notified at 5:40 a.m. I mean,
9 a.m., yes.

10 Q And what time did you arrive?

11 A 5:52 a.m., 12 minutes later.

12 Q And it's my understanding you were at the
13 Salem headquarters putting gas in your vehicle when you
14 were notified?

15 A Yes, sir, I was.

16 Q In looking at -- well, what were the
17 weather conditions that day?

18 A At the time of accident where I was, it
19 was misting.

20 Q Where you were in --

21 A Salem.

22 Q -- Salem?

23 A Salem.

24 Q And did those weather conditions change

1 as you came north on 81?

2 A It stopped.

3 Q Where did it stop to the best of your
4 recollection?

5 A Around the 150 mile marker.

6 Q When you arrived at the scene, was it
7 still misting there?

8 A No, sir, not that I recall.

9 Q Was the roadway surface wet or dry?

10 A It was wet.

11 Q Roadway surface was wet, all right.

12 A I put dry. Okay, then it was dry.

13 Q So in Exhibit 1, looks like Page 5 of 7
14 you indicated that the roadway surface was dry?

15 A Yes, sir.

16 Q Was there any fog on the roadway that
17 morning?

18 A Not at the scene.

19 Q Did you see any fog between Salem and
20 getting to the scene?

21 A I do not recall.

22 Q Tell me -- well, it was still dark?

23 A It was.

24 Q And was the scene of the accident lighted

1 or not?

2 A It was not.

3 Q There might have been some --

4 A The rest area was lit, but the roadway
5 where the accident occurred was not.

6 Q Would the rest area lights have
7 illuminated the area where the ramp and the initial
8 collision took place?

9 A I do not recall.

10 Q All right. Tell me when -- what do you
11 do when you start an investigation of an accident like
12 this one? I mean, tell me what you go through and how you
13 complete your investigation.

14 A Try to figure out what occurred prior to
15 the accident and at the time of the accident. So when I
16 arrived on scene, based on the two individuals being hurt
17 in the crash on Vehicle 1 and Vehicle 2 -- I mean, Vehicle
18 2 and Vehicle 3, excuse me -- I had to ask for witness
19 statements, who witnessed it, and went from there.

20 Q In this particular accident, did you or
21 any of the other troopers with you take any measurements
22 of any kind?

23 A No, sir. Not that I recall. I didn't.
24 I don't know about the other troopers.

1 Q So other than photographs depicting skid
2 marks and the location of collision marks in the roadway
3 or gouge marks or debris in the roadway, there has been no
4 other documentation as far as measuring or placement of
5 those items?

6 A There is not.

7 Q Other than the three women -- I'm sorry.
8 Well, the three women that you may have talked to and
9 gotten their written statements and the other woman that
10 Trooper Flowers talked to and got her statement, did you
11 obtain a written statement from anyone else?

12 A Just from those witnesses.

13 Q Okay. Did you -- you also spoke to
14 Israel Martinez?

15 A Yes, sir.

16 Q And did you get a written statement from
17 him?

18 A I did not get a written statement, no.

19 Q You had your cruiser's recording camera
20 and, I guess, verbal recording mechanism on for the
21 majority of your time at the scene?

22 A Yes, sir.

23 Q After just, say, approximately two hours,
24 it went off. Is that something that you had to physically

1 turn off?

2 A No.

3 Q How does that --

4 A I don't recall it turning off.

5 Q Okay.

6 A If it did, it did it on its own.

7 Q So you didn't -- when you -- because it
8 doesn't have on there -- like you're talking to
9 Mr. Martinez when you handed him his tickets and, you
10 know, got him to sign and things of that nature, so you
11 didn't intentionally turn it off for that part of it?

12 A Not that I recall. That's not something
13 I do.

14 Q In looking at Exhibit 1, you've got the
15 information for Vehicle 1 which was being driven by Israel
16 Martinez?

17 A Yes, sir.

18 Q And specifically it shows that his speed
19 before the crash was five miles per hour?

20 A Yes, sir.

21 Q Let me -- did he -- do you ask the driver
22 if that was his speed or do you estimate that or how do
23 you come about getting that number?

24 A I don't recall if I asked him his speed.

1 Q Okay. The speed limit at this location
2 was what?

3 A 70 miles per hour.

4 Q For Brandon Lester, again, there is a
5 determination of speed before crash at 70. Do you know
6 how you got that speed?

7 A When I spoke to him -- what I recall is,
8 when I spoke to him, I asked him how fast he was going,
9 and I believe he said that he was going the speed limit.

10 Q Okay. And looking up above in the driver
11 information, it indicates under Safety Equipment Used
12 Number 8 which would be no restraint?

13 A Yes, sir.

14 Q And Airbag 2 which is not deployed?

15 A Yes, sir.

16 Q And then No. 3 for ejected is totally
17 ejected?

18 A Yes, sir.

19 Q As we sit here today, based on your
20 investigation, do you know definitively that Mr. Brandon
21 Lester was ejected from his vehicle?

22 A No.

23 Q Was that an assumption on your part?

24 A Based on witness statement and what I

1 believe could have happened, what possibly happened, yes.

2 Q And for Injury Type 2 is just serious
3 injury?

4 A Yes.

5 Q And then you have similar designations
6 for Mr. Shifflett. Safety equipment, he was using a
7 lap-and-shoulder belt?

8 A Yes.

9 Q Airbag not deployed?

10 A Yes.

11 Q Not ejected?

12 A Yes.

13 Q Injury type, serious?

14 A Yes, sir.

15 Q Now, as for Mr. Shifflett's speed, speed
16 before crash, you have 70?

17 A I have 60.

18 Q I'm sorry, 60.

19 A Yes, sir.

20 Q In a speed limit of 70?

21 A Yes, sir.

22 Q Now, did you ask Mr. Shifflett how fast
23 he was traveling?

24 A I don't recall if I asked him.

1 Q And do you know where you would have
2 gotten that number if you did not get it directly from
3 Mr. Shifflett?

4 A I got it based off of a witness statement
5 from Bingaman.

6 Q So Ms. Bingaman --

7 A I believe it's Bingaman. One of the
8 witness statements told me she was in the right lane. I
9 believe it was Bingaman. I'm not sure.

10 Q And that she was slowing down to turn
11 into the rest area, and that's when he changed lanes from
12 the right lane to the left lane --

13 A Yes, sir.

14 Q -- to pass her?

15 A Yes, sir.

16 Q And did he also indicate he wasn't
17 exceeding the speed limit?

18 A Yes, sir.

19 Q And so you just estimated that it was 60?

20 A Yes, sir.

21 Q Now, on Page 3 of 7, you indicated that
22 Vehicle 2 had skidding after the application of his
23 brakes?

24 A Yes, sir.

1 Q And that would have been the Brandon
2 Lester vehicle?

3 A I'm looking at Vehicle No. 3 here.

4 Q I'm saying on Page 3 of 7.

5 A Okay, sorry. 3 of 7, after application
6 of brakes, yes, sir.

7 Q And that would have been Brandon Lester?

8 A Yes, sir.

9 Q And as far as Vehicle 3, again there
10 would have been skidding after application of brakes?

11 A Yes, sir.

12 Q When you arrived at the scene, was there
13 any emergency EMS, fire, or rescue already at the scene?

14 A No, sir.

15 Q So you were the first --

16 A Well, there was, I believe, right before
17 I got there, I believe there was a fire truck. I believe.
18 I can't say for sure, thinking about it. I believe I was
19 the first person to speak to Brandon Lester giving me
20 reason to believe I was the first person on the scene.

21 Q And you did speak to Mr. Lester at the
22 scene?

23 A Yes, sir, I did.

24 Q Okay. And tell me what his condition was

1 at that time.

2 A He was in a lot of pain and he was
3 screaming for help. Seemed to be a serious injury.

4 Q Where did you have the conversation with
5 Mr. Lester?

6 A Over the guardrail on an embankment on
7 the left side of the road.

8 Q Did you also speak to him in the
9 ambulance?

10 A I do not recall.

11 Q Did you go to speak to him after you left
12 the scene in the hospital?

13 A Yes, sir.

14 Q Did he give you a statement at the scene
15 when you spoke to him when he was on the other side of the
16 guardrail?

17 A Not a written statement, but he did give
18 me a statement.

19 Q All right. And do you recall what he
20 told you?

21 A I asked him what happened. He says he
22 doesn't remember. He just remembers a white van.

23 Q And you were recording -- even -- I guess
24 it was on your radio mic --

1 A Yes, sir.

2 Q -- will then record into your police
3 vehicle?

4 A Yes, sir.

5 Q And so if the recording -- well, I guess,
6 have you reviewed that recording since that morning?

7 A One day it was like when I made a copy of
8 it, which is a week after that. So based on me saying
9 what Brandon Lester told me is what I believe he said. If
10 you have something to --

11 Q Well, it appears that initially that he
12 said that tractor-trailer was across the road, he wanted
13 to stop, didn't see it in time, smacked it, and another
14 car hit him, and knocked him over the guardrail.

15 A Okay.

16 Q That he was ejected out of the truck
17 somehow, but he was not wearing his seat belt; that he was
18 in the fast lane, and the tractor-trailer was all across
19 the roadway backing up. And another car wrecked, too, and
20 it ran, a white van. A big van. Do you remember him
21 making those statements?

22 A I do not recall him making those
23 statements.

24 Q So that doesn't refresh your

1 recollection?

2 A Not at this time.

3 Q All right. And another part he indicated
4 a tractor-trailer was across the roadway like backing up
5 in the middle of the road. I went to stop. The car going
6 in front hit his brakes so fast that the truck slid into
7 him and another car hit me real hard and I seen a white
8 van bumping up on the hood, a big van.

9 Does that refresh your recollection?

10 A I recall him saying something about the
11 white van, but other than that I don't -- doesn't refresh
12 my memory.

13 Q Was it your understanding that there was
14 another vehicle in front of Mr. Lester as he proceeded to
15 see the tractor-trailer across the roadway in front of
16 him?

17 A No, sir.

18 Q When you arrived, Mr. Martinez's vehicle
19 was on the right shoulder of the roadway on its hood, or
20 on the roof?

21 A No, sir, not Martinez.

22 Q I'm sorry. Thank you.

23 When you arrived, Mr. Lester's pickup
24 truck was off on the right shoulder of the roadway rolled

1 over onto its hood?

2 A Yes, sir.

3 Q Okay. And where was the box truck
4 located?

5 A It was just in front of the pickup truck
6 on its side against a tree.

7 Q And the box truck would have been facing
8 north?

9 A Yes, sir.

10 Q And it was on its driver's side?

11 A Yes, sir.

12 Q Okay. When you arrived, do you know
13 where the SMC tractor was that Mr. Martinez had been
14 driving?

15 A When I arrived, I do not know where it
16 was.

17 Q Can you draw on Trooper Exhibit 2 where
18 Mr. Martinez said he was when the initial impact took
19 place?

20 A While speaking to Mr. Martinez, he puts
21 it in -- right in through here. Somewhere in through here
22 is where he was, he said he was. He says he was making a
23 right turn.

24 Q Well, before you -- well, okay, I just --

1 that's fine, go ahead. Where did -- this is a concrete --
2 not concrete, a paved, I'll say, triangle --

3 A Yes, sir.

4 Q -- in-between the travel portions and the
5 right entrance ramp to the rest area?

6 A Yes, sir.

7 Q And then, I guess, this shadow, I
8 believe, is of a sign, big blue sign says Rest Area?

9 A Yes, sir.

10 Q And this is a grassy portion?

11 A Yes, sir.

12 Q When you arrived, where was Mr. Lester's
13 vehicle? Go ahead and put that in.

14 A It was right in here.

15 Q All right. And where was the box van?

16 A The box van I believe is right here. I'm
17 not sure. I don't want to mark it because I'm not a
18 hundred percent sure. Looking at this, I can't tell for
19 sure.

20 Q Okay. Well, if you were to look at --

21 A It was faced there so --

22 Q So in that first set of -- it would have
23 been in that first set of bushes or...

24 A I can't say for sure because of that tree

1 right there. If you have another picture possibly it
2 could help me.

3 Q I think -- is that the tree --

4 A Those are the two trees that you are
5 looking at right here.

6 Q Right.

7 A There's two trees by itself, which I
8 can't see on here, gives me reason I'm not sure. If I had
9 to guess --

10 Q I don't want you to guess.

11 A Yeah.

12 Q In looking at this photograph --

13 A Two trees here with the truck --

14 Q And is that the beginning --

15 A -- so I would say he was right here.

16 Q All right. Do you want to go ahead and
17 draw just your best recollection? And he was on his side?

18 A I believe he was there on his driver's
19 side facing north.

20 Q Okay. And the truck, the pickup truck,
21 when you arrived would have been angled with the front of
22 it facing where?

23 A Towards the rest area, so this way.

24 Q All right. And go ahead and draw the

1 front of where the box truck was facing.

2 A (Witness complies.)

3 Q And you -- where did you -- when you
4 arrived, where did you park your vehicle?

5 A Somewhere right in here.

6 Q All right. And go ahead and mark where
7 Mr. Martinez indicated that he was cutting across -- well,
8 what did Mr. Martinez tell you he -- what maneuver he was
9 making when this incident took place?

10 A A right turn.

11 Q And a right turn for what purpose?

12 A To head south on Interstate 81.

13 Q And what vehicle was Mr. Martinez
14 driving?

15 A Tractor-trailer.

16 Q The SMC tractor-trailer?

17 A I believe so.

18 Q And was he pulling another
19 tractor-trailer?

20 A Yes, sir.

21 Q And how was that other tractor-trailer
22 hooked onto the SMC tractor?

23 A With a tow-haul package, I guess.

24 Q Some sort of a towing hitch?

1 A Towing hitch, yes, sir.

2 Q And in which direction was the towed
3 tractor facing in relation to the front of the SMC
4 tractor?

5 A Opposite direction.

6 Q Okay. And when you spoke to
7 Mr. Martinez, he indicated that he was attempting to go up
8 north on the southbound entrance ramp to make a U turn to
9 head southbound on 81?

10 A Yes, sir.

11 Q And was he cutting across the paved
12 triangle between the entrance ramp and the travel portion
13 of the roadway, of the interstate?

14 A He didn't make a statement to that. He
15 just showed me where it was at that time.

16 Q Okay. Can you mark on the diagram where
17 you indicate he was -- or he told you he was?

18 A I believe he said he was here, based on
19 speaking to him, facing this way.

20 Q Did he indicate to you whether or not he
21 was in the travel lanes of Interstate 81?

22 A Yes, he did.

23 Q And did he say he was blocking both
24 right- and left-hand lanes or how far out he was?

1 A I don't recall him making that statement.

2 Q Do you recall seeing some debris as a
3 result of the impact between -- the initial impact between
4 Mr. Lester's pickup truck and Mr. Martinez's tractor?

5 A I believe so.

6 Q And where was that debris?

7 A Where he said he was.

8 Q All right. Was it in the roadway, was it
9 on the shoulder, was it --

10 A He was in the roadway.

11 Q In the right-hand lane, left-hand lane?

12 A I can't recall. I remember -- I recall
13 there being stuff in the roadway. I just don't recall
14 which lane it was in.

15 Q Okay. And did you observe where on the
16 tractor that was towing the other tractor the damage was?

17 A Which tractor are we talking about? Are
18 we talking about the SMC tractor-trailer?

19 Q They were hauling -- the SMC was hauling
20 the Salinas --

21 A Yes.

22 Q Do you know where the damage was on that
23 vehicle from the impact by Mr. Lester's pickup truck?

24 A The front left bumper.

1 Q All right. And if I understand, as we
2 sit here today, what you've marked as -- well, let's do
3 this: Will you take the Sharpie and draw a line to the
4 box truck, just a line down here to the white area and put
5 the letter A.

6 A (Witness complies).

7 Q Do another line from the Lester's vehicle
8 and put the letter B.

9 A (Witness complies).

10 Q Put the line from your vehicle, and it
11 will be the letter C. And the line from Mr. Lester's
12 tractor -- I'm sorry, Mr. Martinez's tractor as letter D.

13 A (Witness complies).

14 (Deposition Exhibit No. 3 marked for
15 identification.)

16 BY MR. FRANKL:

17 Q Okay. Now, in looking at the
18 photographs, I'm going to collectively mark the entire
19 pile as Trooper Atkins No. 3. But then specifically I'm
20 going to mark this one as 3-A. Can you tell us what that
21 photograph depicts?

22 A Depicts a scuff -- scuff mark indentions
23 in the roadway from a collision.

24 Q And were you able to determine from what

1 collision those scuff marks were created?

2 A Yes, sir.

3 Q Was that the first collision when the
4 Lester vehicle hit the SMC tractor or the second collision
5 when the box truck hit the Lester vehicle?

6 A The second collision.

7 Q Okay. And does 3-B show those same scuff
8 marks just from a different, closer perspective?

9 A Yes, sir.

10 Q All right. And 3-B shows that your
11 trooper's vehicle actually wasn't all the way into the
12 grass area. It was actually stopped on the paved area
13 before the grass area started?

14 A Yes, sir.

15 Q All right. And it also gives us
16 reference -- because right to the right of the yellow legs
17 is the post that holds the sign that says "rest area"?

18 A Yes, sir.

19 Q And so that allows us to say which one of
20 these -- which one of these markings on Exhibit 2 shows
21 the -- where the scuff marks would have been?

22 A Yes, sir.

23 Q All right.

24 A Seems I put my -- position of my car --

1 Q Too far south.

2 A Just a car length too far south, maybe
3 two car lengths. So it would really be right in here. Do
4 you want me to mark it again?

5 Q No, that's fine.

6 A Okay. So...

7 Q And the white line --

8 A Yes.

9 Q -- would have been --

10 A Right where the collision occurred.

11 Q Okay. Can you put a big X in a circle?

12 A (Witness complies.)

13 Q Okay, now put a circle around that. And
14 then why don't you draw it up and put the letter E.

15 A (Witness complies.)

16 Q Okay. So that was the resting place of
17 Mr. Lester's pickup truck before the second collision?

18 A Yes, sir.

19 Q All right. Now, in looking at these --
20 in looking at what's been marked as Exhibit 3-C, you see
21 one set of skid marks?

22 A Yes, sir.

23 Q And those skid marks would have been from
24 what vehicle?

1 A That, I do not recall. I do not know.

2 Q Okay. If you look at these other
3 photographs that shows there is a second set of skid
4 marks --

5 A Uh-huh.

6 Q -- starting later --

7 A Yes, sir.

8 Q -- does that help you to determine --

9 MS. WHITE: Can we mark the other
10 photographs you are showing him for reference?

11 MR. FRANKL: I will, absolutely.

12 BY MR. FRANKL:

13 Q I'm showing you photographs 3-D and 3-E.
14 Do those help you determine from which vehicle the
15 photographs in 3-C came from?

16 MR. DUNN: Skid marks.

17 THE WITNESS: The skid marks. No, I
18 can -- I can sit here and say what I think they
19 could possibly be --

20 BY MR. FRANKL:

21 Q That's what I'm asking. Which ones do
22 you think these skid marks are from that are on Exhibit
23 3-C?

24 MS. WHITE: I, of course, object to any

1 speculation. But go ahead and answer.

2 THE WITNESS: I think they come from
3 Brandon Lester's truck, but I can't say for sure
4 because these tire marks look to be the same.
5 And I don't know if it's from the box truck, the
6 front tires being slammed on the brakes, skid
7 mark, and then when it goes sideways, the rear
8 ones put these skid marks here. I don't want to
9 sit here and say they are for sure Brandon
10 Lester's because I don't know.

11 BY MR. FRANKL:

12 Q So is it fair to say as we sit here today
13 that you can't definitively identify from what vehicle the
14 skid marks came from or how long those skid marks were?

15 A Looking at the pictures, no.

16 Q Well, do you have any independent
17 recollection of where the skid marks were that were left
18 by Brandon Lester's vehicle prior to the initial collision
19 with the SMC tractor?

20 A I don't have any recollection of --

21 Q Do you even know that he left skid marks
22 before that initial collision?

23 A Based on my report, he did.

24 Q Do you know whether -- and based on your

1 report, the box truck driven by Mr. Shifflett also left
2 skid marks after he applied his brakes?

3 A Yes, sir.

4 Q Do you know whether he applied -- well,
5 starting with Mr. Lester, do you know whether Mr. Lester
6 applied his brakes before or after the initial impact with
7 SMC?

8 A Say that one more time.

9 Q Do you know if Mr. Lester driving the
10 pickup truck applied his brakes before the initial impact
11 with the tractor, the SMC tractor?

12 A After he pressed his brakes, he left skid
13 marks.

14 Q I understand that, but do you know
15 whether or not he hit his brakes before impact or after
16 impact?

17 A I do not know for sure.

18 Q Okay. Would the same hold true for
19 Mr. Shifflett; you don't know whether or not Mr. Shifflett
20 left skid marks before or after he collided with
21 Mr. Lester's vehicle?

22 A Yes, sir, I do not know.

23 Q And it's my understanding that since
24 there was no fatality the state police crash team was not

1 called to this stop?

2 A Yes, sir.

3 Q Now, Mr. -- in looking at Exhibit 2, you
4 do indicate that there was some debris from the initial
5 impact further north than the collision point that you've
6 marked as letter E?

7 A Yes, sir.

8 Q Okay. You just don't remember where it
9 was?

10 A No, sir.

11 Q When you arrived -- in looking at Exhibit
12 3-F, there's a wooden pickup truck bed cover. When you
13 arrived, was that where it was?

14 A Is where -- when I arrived, that's where
15 it was, yes, sir, in that picture.

16 Q Okay. And Mr. Lester, where was he on
17 Exhibit 2?

18 A I can't say for certain, but it was right
19 in here --

20 Q Well, was he --

21 A -- from looking at this picture.

22 Q Okay.

23 A He was -- where I parked, he was directly
24 below me so --

1 Q When you say below you, it would have
2 been --

3 A -- left of me.

4 Q -- little bit to the south and at a
5 slight angle?

6 A Just directly to the left -- I get out of
7 my car and I hear him directly to the left of me.

8 Q Okay. So go ahead --

9 A My car, I put here maybe a car length
10 back so I'm going to say he was right in here.

11 Q All right. Go ahead and just put a
12 circle around that and then bring a line over here and
13 make that F.

14 A (Witness complies.)

15 Q When you arrived, were there individuals
16 helping Mr. Lester?

17 A I believe there was one woman out with
18 him.

19 Q Okay. And when you went over and spoke
20 to him at the scene, was he laying down?

21 A He was.

22 Q Were you informed by any of the witnesses
23 that when they initially saw him or realized he was over
24 there that he was already standing?

1 A I don't recall.

2 Q There was a worker at the rest area,
3 Wendy Montgomery. Did you ever speak to her?

4 A I don't believe so.

5 Q Okay.

6 A I'm not sure.

7 Q It's my understanding that after they
8 moved the bread truck that Mr. Shifflett was driving they
9 found a toolbox and some tools and a backpack and some
10 personal items. Do you recall that?

11 A That's the first time I've heard of it.

12 Q So if on the -- if on the video you say,
13 "Okay, I'll take care of that," you don't remember?

14 A I definitely don't recall that.

15 Q I think I was up to letter F, but I'm
16 going to go ahead and mark this as 3-G. Is that the
17 inspection sticker for Mr. Lester's vehicle?

18 A Yes, sir.

19 Q So May -- it would have expired May of
20 this year?

21 A Yes, sir.

22 Q And the point of impact for the second
23 crash, the one between the white box truck and
24 Mr. Lester's vehicle, took place in the left-hand lane?

1 A Yes, sir.

2 MS. WHITE: I'm just going to object to
3 foundation. But go ahead.

4 MR. FRANKL: Well, he's already said that
5 those marks in the road were from the second
6 collision.

7 MS. WHITE: I understand.

8 MR. FRANKL: Well, I'm trying to
9 understand what your objection is.

10 MS. WHITE: Oh, I'm just not sure he can
11 determine that, but...

12 BY MR. FRANKL:

13 Q In looking at what's been marked 3-H,
14 does that give you a better indication that it in fact was
15 that first set of bushes?

16 A Yes, sir.

17 Q Okay. So you did mark it correctly on
18 your diagram?

19 A Yes, sir, I did.

20 Q Did you mark the location of the white
21 box truck correctly on your diagram and mark it as Point
22 A?

23 A Yes, sir.

24 Q When you were at the scene, did

1 Mr. Lester, was he going in and out of consciousness?

2 A No.

3 Q Was he answering your questions
4 appropriately?

5 A Other than he didn't remember anything,
6 yes.

7 Q Okay. But if in fact he did say he
8 remembered things and gave you that information on the
9 video that you took, that would have been correct in the
10 information that he gave you?

11 A Yes.

12 Q Okay. But did he appear that he was, you
13 know, dazed or not cognizant of what was going on around
14 him?

15 A Yes, sir.

16 Q I'm going to show you what's been marked
17 as 3-I. Is that a photograph of the front of the SMC
18 tractor?

19 A Yes, sir.

20 Q And the damage would have been on the
21 driver's side front?

22 A Front left.

23 Q Front left?

24 A Yes, sir.

1 Q And is there any damage past the middle
2 of the -- of the front bumper?

3 A I can't tell if there's any damage to the
4 right bumper.

5 Q Okay. And to your knowledge -- okay.
6 Well, here is 3-J. That would have been some potential
7 damage to the front right bumper?

8 A Yes, sir, on Page 6 of 7, I marked that
9 the whole front end was damaged. So that would be
10 correct.

11 Q To your knowledge, was there -- well, in
12 looking at 3-K, was this the towing apparatus used between
13 the two vehicles?

14 A Yes, sir.

15 Q And to your knowledge, was there any
16 damage to the Salinas Express vehicle that was being towed
17 by the SMC tractor?

18 A Not from this wreck from what I could
19 tell.

20 Q Okay. Other than speaking to Israel
21 Martinez, did you speak to any other Hispanic man at the
22 scene of the accident?

23 A Spoke to the driver of Salinas but didn't
24 have a conversation with him. He just said that he was

1 driving this vehicle but he wasn't in it.

2 Q Do you know who that was?

3 A No, I didn't get his name.

4 Q He said he was then the driver of the one
5 that was being towed?

6 A He said he was the driver of this
7 vehicle. And I said I don't --

8 Q When you indicate this vehicle, what
9 vehicle --

10 A Salinas.

11 Q That's what I'm asking. So he indicated
12 he was the driver of the Salinas tractor that was being
13 towed?

14 A From what I recall, I remember
15 speaking -- having an encounter with a Hispanic male that
16 stated he was the driver of Salinas, which wasn't being
17 driven; it was being towed. So I didn't get any of his
18 information.

19 Q Did you talk to any other Hispanic
20 drivers at the scene?

21 A No, sir.

22 Q Did you talk to Mr. Shifflett at the
23 scene?

24 A I don't recall. I believe I spoke to him

1 for a second, but like I said they were working on getting
2 him out of the car. I'm not even sure -- maybe if I did
3 speak to him, I asked for a driver's license. I can't say
4 for certain I spoke to him at the scene.

5 Q Now, was he going in and out of
6 consciousness?

7 A He was the one going in and out of
8 consciousness.

9 Q When you asked Mr. Martinez to give you
10 his logs, license, and registration, did he ultimately
11 comply and provide you with all three of those?

12 A Driver's license, vehicle registration
13 and insurance is what I asked him for.

14 Q And did he ultimately give all three of
15 those to you?

16 A Yes, sir.

17 Q And did the registration and the
18 insurance match the SMC tractor that he was driving?

19 A Yes, sir.

20 Q Okay. Now, do you know how to read DOT
21 log books?

22 A We're not trained on DOT log books, so...

23 Q Do you recall looking at the DOT log
24 books that Mr. Martinez gave you at the scene?

1 MR. DUNN: I'm going to object to the
2 form.

3 BY MR. FRANKL:

4 Q Do you remember seeing or reviewing or
5 inspecting the log books that Mr. Martinez gave you at the
6 scene?

7 A No, sir.

8 Q You do or don't?

9 A I did not review them or look through
10 them. He handed it to me. I threw it on my dash and said
11 "I do not need your logbook."

12 Q Did you then give those back to
13 Mr. Martinez?

14 A Yes, sir.

15 Q But you didn't look at them at all?

16 A No, sir.

17 Q All right.

18 MS. WHITE: Dan, can we take a break for
19 a second? I need to run to the ladies' room.

20 MR. FRANKL: Certainly. Off the record.

21 (A recess was taken.)

22 BY MR. FRANKL:

23 Q Trooper, you indicated just now that you
24 looked at what Mr. Martinez handed you, and you said they

1 were his logs. Did you look at them to see that they were
2 in fact logs?

3 A No. It was a binder which I believe had
4 his logbook, and I can't recall if there was a logbook in
5 there. I --

6 Q So you -- as we sit here today, you
7 cannot say that he actually had filled out DOT logs
8 showing his duty status?

9 A Yes, sir, I cannot.

10 Q Okay. Whatever documents Mr. Martinez
11 gave to you, you took the information off the registration
12 and the insurance certificate, and you ultimately gave him
13 all of those documents back?

14 A Yes, sir.

15 Q Did you review any documents other than
16 the registration and the insurance certificate?

17 A No, sir.

18 Q What was Mr. Martinez's physical
19 condition? Was he alert and oriented?

20 A Yes.

21 Q Was his speech slurred?

22 A No, sir.

23 Q Did you suspect any alcohol or drugs?

24 A No, sir.

1 Q Was he cooperative with you?

2 A Very cooperative.

3 Q Was he open in explaining "this is where
4 I was" and walked you up there and showed you?

5 A Yes, sir.

6 Q And just to be clear, he did in fact
7 state to you that it was his intention going north on the
8 southbound ramp that he was going to pull a U turn onto
9 the travel portion of Interstate 81?

10 A Yes, sir. If you call it a U turn.

11 Q Well, if he was going north up the ramp
12 and then he's going to be going the opposite direction, it
13 would be in fact a U turn?

14 A Yes, sir.

15 Q 180-degree difference?

16 A Yes, sir.

17 Q Okay. Assuming Mr. Lester made specific
18 statements while you talked to him at the scene that are
19 recorded on your police --

20 A Camera.

21 Q -- camera and audio disk, those were the
22 most specific statements that he gave you about how the
23 accident took place as compared to when you got to the
24 hospital?

1 A Repeat the beginning of it?

2 Q Assuming he gave you a detailed
3 explanation of what lane he was in and what the other
4 vehicles were doing and things of that nature on your
5 video and audio recording --

6 A Yes, sir.

7 Q -- that would have been at the scene?

8 A Yes, sir.

9 Q And that would have been more specific
10 than what he ultimately told you later at the hospital
11 when he basically said "I don't have any recollection"?

12 A Okay, you're referring to Brandon Lester.

13 Q Lester.

14 A Okay, you said Martinez.

15 Q I'm sorry.

16 A I know. There's three different people
17 here. That's why I was trying to --

18 Q Let me strike those questions and start
19 over.

20 If Mr. Lester gave you a more detailed
21 explanation as to what was going on at the scene that was
22 picked up on your audio and visual video recording, that
23 would have been the most explicit he ever was as to what
24 happened in the accident as compared to what he told you

1 at the hospital?

2 A Yes, sir.

3 Q And what he told you at the hospital was
4 "I really can't remember"?

5 A Yes, sir.

6 Q Between the time the audio and video was
7 taken and the time you copied it and produced it pursuant
8 to the subpoena, was there any alterations or deletions
9 made?

10 A No, sir.

11 Q When you approached the rest area as
12 you're heading south on Interstate 81, how far back is the
13 crest of the slight hill before you can look down and see
14 the entrance to the rest area and the rest area is spread
15 out in front of you?

16 A Tenth or two-tenths of a mile.

17 Q Did you actually go out and look or are
18 you estimating?

19 A Estimating.

20 Q Has the entrance changed at all from the
21 date of this accident to now?

22 A No, sir.

23 Q So it would be the same today as it was
24 back then?

1 A Yes, sir, other than you'd have to go at
2 nighttime.

3 Q I understand. And is your call unit 533?

4 A Yes, sir.

5 Q To your knowledge, did anyone take down
6 the information from any of the other tractors or trailers
7 at the scene of this accident?

8 A Not to my knowledge.

9 Q Other than the four women that gave you
10 written statements, Mr. Martinez, Mr. Lester,
11 Mr. Shifflett, are you -- and I guess the one Salinas
12 driver that you didn't identify, are you aware of any
13 other witnesses to this accident?

14 A That I am aware of?

15 Q Are you aware of?

16 A Not that I recall.

17 Q Have you reviewed the 911 tapes from this
18 accident?

19 A No, sir.

20 Q As a result of this accident, you brought
21 a reckless driving charge and a failure to --

22 A Obey a highway sign.

23 Q -- obey a highway sign?

24 A Yes, sir.

1 Q All right. And did Mr. Martinez show up
2 at court?

3 A No, sir.

4 Q So he was convicted in his absence?

5 A Yes, sir.

6 Q All right. Now, in that -- in that
7 hearing, is it your understanding that Mr. Lester was
8 ejected as a result of the first collision between SMC and
9 his pickup truck?

10 A Say the beginning of that one more time.

11 Q Is it your understanding that Mr. Lester
12 was traveling down the road, his pickup truck hit the SMC
13 tractor, and that as a result of that initial collision he
14 was ejected?

15 A That's what I believe happened.

16 Q Now, after -- after this accident, were
17 you ever contacted at any time by Mr. Martinez?

18 A No, sir.

19 Q Were you present at court when
20 Mr. Martinez was brought in for his failure to appear?

21 A No, sir.

22 Q Have you talked to Mr. Martinez at any
23 time after the date of this accident?

24 A No, sir.

1 Q Has anybody from Salinas Express talked
2 to you after this accident?

3 A No, sir.

4 Q Has anyone from SMC talked to you after
5 this accident?

6 A Yes, sir.

7 Q How did that come about? How did they
8 identify themselves and what did they say?

9 MR. DUNN: Let me note an objection here.
10 Foundation hasn't been laid as far as who made
11 the statement.

12 BY MR. FRANKL:

13 Q You can go ahead and answer the question.

14 A It was approximately three or four days
15 after the wreck, and I had a personal message to give a
16 woman a call with SMC Transport.

17 Q When you -- you got that call through
18 dispatch?

19 A Yes, sir.

20 Q Did you return that call on your personal
21 phone?

22 A Yes, sir.

23 Q Would the phone log on your personal
24 phone still have that number?

1 A I want to stop you. I just recalled I
2 did it at the area office. I remember sitting at the area
3 office working on this crash report when I made the phone
4 call.

5 Q Okay. So you called from the area
6 office?

7 A Yes, sir. I usually make phone calls
8 through my personal phone, but I just happened to be at
9 the area office and made that phone call.

10 Q That's fine.
11 When you made that call from the area
12 office, when someone picked up, do you recall how they
13 answered the phone?

14 A "Hello."

15 Q So they didn't say "SMC"?

16 A No, sir.

17 Q Okay. And what -- tell me about that
18 conversation to the best of your recollection.

19 A I just acknowledged that I was Trooper
20 Atkins, Virginia State Police. And I asked -- I said I
21 had a personal message to give this number a call. She
22 stated that she was, I believe, the owner of SMC and --
23 that was involved in the crash that I worked. And she
24 made statements from what I believe was Martinez was a

1 regular driver for them but they made an agreement for
2 Martinez to buy that truck. But under the agreement was
3 it had some repairs that needed to be done. And it was at
4 the shop. And Martinez at that point did not have
5 permission to drive the vehicle.

6 And when they made that agreement for him
7 to buy the truck, they canceled their insurance, is what I
8 believe she told me. And he took it upon himself,
9 Mr. Martinez, and went and picked up that truck and drove
10 it to Virginia.

11 Q Did she ever identify who she was other
12 than the owner of SMC?

13 A Not that I recall.

14 Q Had you ever had any other contact with
15 any of the Martinez, SMC, or Salinas after that phone
16 call?

17 A No, sir.

18 Q In looking at the transcript from the
19 traffic hearing against Mr. Martinez, did Mr. Martinez
20 tell you why he was going out the entrance ramp of the
21 rest area to make the turn onto 81?

22 A He couldn't make a U turn in the rest
23 area because he was hooked up with another
24 tractor-trailer.

1 Q You indicated in your testimony that
2 Mr. Lester said that he saw the tractor-trailer in the
3 roadway. Did he ever say what lane he was traveling in to
4 you?

5 A Brandon Lester?

6 Q Yes.

7 A I do not recall.

8 Q It indicated in your testimony that he
9 said he slammed on his brakes and started to fishtail. Do
10 you recall that testimony?

11 A In court?

12 Q Yes.

13 A I do not recall.

14 Q Well, my question is: Do you remember
15 seeing evidence that Brandon Lester was fishtailing before
16 the impact with the SMC tractor?

17 A I do not recall.

18 Q Do you have an understanding of what part
19 of Mr. Lester's pickup truck came into contact with the
20 SMC tractor?

21 A Do I have an understanding of which part
22 of Brandon Lester's pickup truck made contact?

23 Q Correct.

24 A That, I do not.